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*Farberware Licensing Company, LLC*

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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FARBERWARE LICENSING COMPANY, LLC,	:	
	:	
Plaintiff,	:	09-CV-2570 (HB and MHD)
	:	
– against –	:	<b>ECF CASE</b>
	:	
MEYER MARKETING CO., LTD., MEYER	:	
INTELLECTUAL PROPERTIES, LTD., and	:	
MEYER CORPORATION, US,	:	
	:	
Defendants.	:	
	:	
-----	X	

**DECLARATION OF CEM OZER IN SUPPORT OF  
 PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO QUASH  
 THE TRIAL SUBPOENA OF STANLEY CHENG AND  
 MOTION FOR COSTS FOR THE DEPOSITION OF STANLEY CHENG**

I, CEM OZER, declare as follows:

1. I am a member of Bushell, Sovak, Ozer & Gulmi, LLP and counsel for Farberware Licensing Company, LLC (“FLC”), Plaintiff in the captioned proceeding. I submit this Declaration in Support of FLC’s Opposition to Defendants MEYER INTELLECTUAL PROPERTIES, LTD., and MEYER CORPORATION, US’s (“Meyer”) motion to quash the trial subpoena served on Stanley Cheng and for the costs of his deposition.

2. Attached hereto as Exhibit 1 is a true and correct excerpts from the August 10, 2009 deposition of Stanley Cheng.

3. Attached hereto as Exhibit 2 are true and correct excerpts from the July 14, 2009 deposition of Robert Rae.

4. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of August 2009.

s/ Cem Ozer  
Cem Ozer (CO 1718)

**OZER DECLARATION  
(MOTION TO QUASH – CHENG)**

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FARBERWARE LICENSING  
COMPANY, LLC,

Plaintiff,

Vs. Case No. 09 CV 2570(HB)(MHD)

MEYER MARKETING CO., LTD.,  
MEYER INTELLECTUAL PROPERTIES,  
LTD., and MEYER CORPORATION,  
U.S.,

Defendants.

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MONDAY, AUGUST 10, 2009

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DEPOSITION OF  
STANLEY CHENG

--o0o--

Reported By: CAROL NYGARD DROBNY, CSR No. 4018  
Registered Merit Reporter

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APPEARANCES:

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The Plaintiff:

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Also Present:

16

DEAN LUCA KRAUSE

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1       A.   Meyer U.S. was granted the right to market  
2   Farberware branded products, and it's been doing so  
3   forever since -- MIH acquired the Farberware rights to  
4   cookware and bakeware.

5       Q.   Okay. And what's your understanding of the  
6   rights that --

7           Well, you know which entity entered in to the  
8   agreement with Farberware to license the rights for  
9   cookware and bakeware?

10       MR. DICKIE: Objection. Lack of foundation.

11       THE WITNESS: No.

12       MR. SOVAK: Mark this as Exhibit 2.

13           (Exhibit No. 2 was marked for Identification.)

14   BY MR. SOVAK:

15       Q.   I'm going to show you what's been marked as  
16   Cheng Exhibit 2.

17           It's a -- let me see the Bates stamps on it  
18   for a second.

19           It's Bates stamped FLC0192 through FLC0242.  
20   It's a document dated June 27th, 1996 entitled "License  
21   Agreement;" is that correct?

22       A.   Yes.

23       Q.   Are you familiar with this document?

24       MR. DICKIE: Object to the form of the  
25   question.

1 THE WITNESS: I can see it. I don't recall,  
2 but -- it's obviously the agreement executed with  
3 Syratech.

4 BY MR. SOVAK:

5 Q. Okay. Well, I want you to look at page -- FLC  
6 0219. It's the signature page for this document between  
7 Farberware Inc., and Meyer Marketing Company Limited; is  
8 that correct?

9 A. Correct.

10 Q. And that was signed by Leonard Florence on  
11 behalf of Farberware, Inc., and by Robert Rae on behalf  
12 Mayer Marketing Company Limited; is that correct?

13 A. Right.

14 Q. Okay. And is -- it your understanding that  
15 this is the document that governs the relationship  
16 between FLC and Meyer U.S. and MIP with regard to the  
17 use of the Farberware name relating to cookware and  
18 bakeware?

19 MR. DICKIE: Object to the form of the  
20 question. Assumes facts.

21 THE WITNESS: Yes.

22 BY MR. SOVAK:

23 Q. And did you negotiate this agreement?

24 A. I was involved in the early part of the  
25 negotiation.

1 Q. And who was that with?

2 A. With Lenny Florence, and Peter Cameron was  
3 present, and Mr. Florence's attorney.

4 Q. Who is Mr. Florence's attorney?

5 Do you recall?

6 A. No.

7 Oh, yes, I do now. Jim Purcell.

8 Q. Okay. And you were negotiating a license for  
9 cookware and bakeware; is that correct?

10 MR. DICKIE: Object to the form of the  
11 question.

12 THE WITNESS: Yes.

13 BY MR. SOVAK:

14 Q. And what's you're understanding of "cookware"  
15 and "bakeware"?

16 A. "Cookware," it's cooking utensils.

17 "Bakeware," it's products that are used for baking.

18 Q. Okay. When you say "cooking utensils," what  
19 do you mean by that?

20 A. It's products that people use to prepare food  
21 in.

22 Q. Okay. Prepare food in -- pots and pans and  
23 things of that nature?

24 A. Right.

25 Q. When you were entering in to this agreement,



1 MR. DICKIE: Object to the form of the  
2 question.

3 THE WITNESS: No, I don't recall there was any  
4 problem.

5 BY MR. SOVAK:

6 Q. Is it your understanding that in -- sometime  
7 in 2001 or 2001 FLC purchased the assets of Farberware,  
8 Inc., from Syratech?

9 MR. DICKIE: Objection. No foundation he  
10 knows anything about that.

11 THE WITNESS: I don't remember the date.

12 BY MR. SOVAK:

13 Q. But it's your understanding that FLC purchased  
14 the assets of Farberware, Inc., from Syratech?

15 A. I was told by Dean Krause.

16 Q. Okay. In 2001 and 2002 was Mr. Krause an  
17 employee of Meyer?

18 A. I don't recall that that was when I heard it.

19 Q. Okay. Do you know if Mr. Krause ever authored  
20 any letters to FLC while he was at Lanahan & Reilly on  
21 behalf of Meyer with regard to the transfer of the  
22 assets from Farberware, Inc., Syratech to FLC?

23 A. No.

24 Q. Is it your understanding that Farberware  
25 Licensing Company owns the Farberware trademark?

1 MR. DICKIE: Objection. Calls for  
2 speculation. No foundation.

3 THE WITNESS: I assume.

4 MR. DICKIE: His question was, was it your  
5 understanding. He didn't ask you to assume anything.

6 THE WITNESS: Uh-huh.

7 Was it my understanding that Farberware  
8 Licensing Corporation owns the right?

9 BY MR. SOVAK:

10 Q. That Farberware Licensing Company owns the  
11 Farberware trademark and that was something you obtained  
12 in the asset purchase from Syratech, Incorporated?

13 MR. DICKIE: Object to the form of the  
14 question.

15 THE WITNESS: Yes.

16 BY MR. SOVAK:

17 Q. And is it is your understanding that  
18 Farberware Licensing Company obtained Farberware, Inc.,  
19 and Syratech's rights under the June 1996 license  
20 agreement between Meyer and Syratech and Farberware,  
21 Inc.?

22 A. No, I'm not aware of that.

23 Q. Okay. Did Meyer -- do you know if Meyer  
24 consented to transfer any of Syratech's or FL --

25 Withdrawn.

1 Do you know with whom Meyer corresponds with  
2 regard to the 1996 license agreement?

3 A. Before it was with Syratech.

4 Q. Okay. Since 2002 do you have any  
5 understanding of -- with whom Meyer corresponds with  
6 regard to the June 1996 license agreement?

7 A. Well, some time after 1996 the Farberware  
8 brand, the FLC business, was sold to Peter Cameron and  
9 company, and then, yes, the ownership transferred to FLC  
10 at the time, and then we began to communicate with --  
11 with FLC.

12 Q. Okay. So it's your understanding now that FLC  
13 is now the licensor under the June 1996 agreement?

14 A. Yes.

15 Q. We talked a little bit about Meyer licensing  
16 things.

17 What other licenses does Meyer have aside from  
18 the license for cookware and bakeware with -- with FLC?

19 A. I don't understand the question.

20 Q. I'm sorry. It was poorly phrased.

21 Does Meyer have other licenses for the  
22 production of cookware and bakeware aside from the  
23 license it holds for Farberware brands?

24 A. You mean the Farberware brand?

25 Q. No, I mean aside from the Farberware brand.

1 A. Yes, we have.

2 Q. What licenses are those?

3 A. We are a licensee of KitchenAid, licensee of  
4 Rachael Ray, and Paula Deen in this country.

5 Q. Okay. Any others?

6 MR. DICKIE: Object to the form of the  
7 question.

8 Others with MUS?

9 BY MR. SOVAK:

10 Q. Let me clarify that.

11 Are these licenses that MUS holds?

12 MR. DICKIE: I thought that was your question.

13 THE WITNESS: Licenses that Meyer holds, not  
14 MUS.

15 BY MR. SOVAK:

16 Q. When you say "Meyer," who are you referring  
17 to?

18 A. To -- Meyer, MIH, under another entity.

19 Q. And is that other entity MIP who holds those  
20 licenses or --

21 A. Yes, I assume.

22 Q. Okay. Are you familiar with the terms of any  
23 of those licenses?

24 A. No.

25 Q. Do you know what percentage royalties Meyer

1 pays under the KitchenAid license?

2 MR. DICKIE: Object to the form of the  
3 question.

4 THE WITNESS: I don't know.

5 BY MR. SOVAK:

6 Q. Do you know if there's any minimum under the  
7 KitchenAid license?

8 A. I don't know.

9 Q. Do you know -- what Meyer paid KitchenAid  
10 under the KitchenAid license last year?

11 A. I don't know also.

12 Q. Okay. Do you know the term of the KitchenAid  
13 license in terms of how long it lasts?

14 MR. DICKIE: Object to the form of the  
15 question. No foundation, given his other answers.

16 Why are you asking those questions given his  
17 answers?

18 And it's not relevant.

19 THE WITNESS: The KitchenAid license has a  
20 period of a few years, and I don't recall how many  
21 years, and it does have to be renewed from time-to-time.

22 BY MR. SOVAK:

23 Q. Has Meyer ever had a dispute with KitchenAid  
24 regarding any aspect of its license?

25 A. No.

1 BY MR. SOVAK:

2 Q. Do you believe that's the same type face font  
3 for Prestige?

4 You believe that's the same on exhibit -- on  
5 the exhibit you're holding, which is the Chroma cookware  
6 set, as it is on Exhibit Number 5?

7 A. As I said, it's difficult to see, but I  
8 believe so, yes.

9 Q. Do you know if Meyer has been attempting to  
10 alter its packaging to more clearly call out the  
11 Prestige brand when it's included with Farberware brand  
12 cookware?

13 A. To more clearly call it out?

14 MR. DICKIE: Object to the question. Assumes  
15 facts.

16 THE WITNESS: I would have thought that this  
17 is actually quite clear in that we highlighted tools in  
18 a separate box, that this is to call out to the consumer  
19 that they are utensils, Prestige branded utensils in  
20 here.

21 BY MR. SOVAK:

22 Q. Let me represent to you that --

23 Well, if you were to learn that there was a  
24 consumer survey that found that roughly 75 percent of  
25 the people viewing these call out boxes still remained

1 confused as to whether the items were Farberware items,  
2 would you expect Meyer to alter its packaging to address  
3 that?

4 MR. DICKIE: Object to the form of the  
5 question unless you lay a complete foundation with  
6 respect to the nature and extent and who conducted the  
7 survey.

8 It's an unfair hypothetical.

9 THE WITNESS: The question again, please.

10 BY MR. SOVAK:

11 Q. Okay. There's a man named Hal Porret, who  
12 conducted a survey on behalf of FLC in this litigation,  
13 where he looked at call out boxes much like the one that  
14 you're looking at there.

15 The survey showed responses of about 75  
16 percent consumer confusion as to the source of the  
17 Prestige tools, most people believing that they were  
18 Farberware.

19 MR. DICKIE: Same objection.

20 BY MR. SOVAK:

21 Q. Would you expect Meyer to alter its packaging  
22 to address the consumer confusion that's been  
23 demonstrated by the survey?

24 MR. DICKIE: Same objection.

25 You still haven't told him all the facts that

1 underlie that survey.

2 THE WITNESS: First time I'm hearing about it,  
3 first of all.

4 And, if there is confusion, you know, Meyer  
5 would attempt to do everything that we can to make it  
6 clearer going forward so it did not -- so that the  
7 consumer would not be confused.

8 BY MR. SOVAK:

9 Q. Do you know if Myers has done any of its own  
10 surveys to determine whether or not there's any consumer  
11 confusion generated as a result of this packaging?

12 A. No.

13 MR. SOVAK: Why don't we take a five-minute  
14 break.

15 (Thereupon a recess was taken at 2:49 p.m.  
16 and the deposition resumed at 2:56 p.m.)

17 BY MR. SOVAK:

18 Q. I believe you indicated before that Exhibit 2,  
19 which is the license agreement between Meyer and FLC, is  
20 the document that governs the rights and obligations of  
21 the parties with regard to the use of the Farberware  
22 trademark cookware and bakeware; is that correct?

23 A. Yes.

24 Q. And Mr. Rae signed that document; is that  
25 correct?



1 MR. DICKIE: Objection. Asked and answered.

2 THE WITNESS: Yes.

3 BY MR. SOVAK:

4 Q. And did he do that at your direction?

5 A. Yes.

6 Q. And, as far as you're aware, the terms of that  
7 document are what govern the relationship between the  
8 parties?

9 MR. DICKIE: Objection. Asked and answered  
10 two questions ago.

11 THE WITNESS: Say that again, please.

12 BY MR. SOVAK:

13 Q. Withdrawn.

14 Are you aware of any written waiver or  
15 modification with regard to any of the terms of the  
16 agreement?

17 A. No.

18 Q. And when I say "the agreement," I mean the  
19 license agreement.

20 A. Yes.

21 Q. Is -- let me ask more clearly.

22 Are you aware of any written waiver or  
23 modification regarding any of the terms of the license  
24 agreement between FLC and Meyer with regard to cookware  
25 or bakeware?

**OZER DECLARATION  
(MOTION TO QUASH – CHENG)**

**EXHIBIT 2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FARBERWARE LICENSING COMPANY, )  
LLC, )  
Plaintiff, )  
vs. )  
MEYER MARKETING CO., LTD., ) No. 09 CV 2570  
MEYER INTELLECTUAL ) (HB and MHD)  
PROPERTIES, LTD., and MEYER )  
CORPORATION, U.S. )  
Defendants. )

The deposition of ROBERT RAE, called for  
examination pursuant to the Rules of Civil  
Procedure for the United States District Courts  
pertaining to the taking of depositions, taken  
before GINA M. LUORDO, a notary public within and  
for the County of Cook and State of Illinois, at  
One Maritime Plaza, San Francisco, California, on  
the 14th day of July, 2009, at the hour of  
9:58 a.m.

Reported by: Gina M. Luordo, CSR, RPR, CRR  
License No.: 084-004143

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14 Representing the Defendants.

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24 Also Present: Mr. Dean Luca Krause

1 you'd let me get the whole question out just so

2 it's clear on the record, that would be great.

3 A. Fine.

4 Q. When was the last time you reviewed the

5 license agreement between Meyer and FLC?

6 A. I don't remember.

7 Q. And by license agreement, when I say

8 license agreement today, I'm referring to the June

9 1996 agreement between Meyer and Farberware.

10 A. To the best of my knowledge, that would

11 have been the last time.

12 Q. So the last time you reviewed the license

13 agreement would have been when you signed it?

14 A. In '96, yes.

15 Q. What was your role in the negotiation of

16 the license agreement with Farberware, if any?

17 A. I really didn't negotiate the license

18 agreement. Lenny Florence and Stanley Cheng

19 basically negotiated it. Stanley talked to me and

20 Bill Perino about the licensing agreement and

21 whether we should do it or not, but I didn't do any

22 of the negotiating.

23 Q. When you say Stanley, you're referring to

24 Stanley Cheng?

1 A. Yes.

2 Q. What did Mr. Cheng tell you about the  
3 license agreement at that time in the conversations  
4 that I think you said he had with you and  
5 Mr. Perino?

6 MR. DICKIE: Object to the form of the  
7 question.

8 BY MR. SOVAK:

9 Q. You can answer.

10 A. Can you repeat the question?

11 Q. I believe that you said Mr. Cheng had  
12 conversations with you and Mr. Perino regarding the  
13 license agreement and whether you should do it?

14 A. Yes.

15 Q. Can you tell me what the substance of  
16 those conversations were?

17 MR. DICKIE: Same objection.

18 THE WITNESS: Basically whether we should do  
19 it, whether it was good for the company. I think  
20 we were all in agreement that it was good for the  
21 company, and whether we should purchase the brand  
22 or license the brand. Stanley wanted to purchase  
23 the brand, and Lenny didn't want to sell the brand.

24 It was a long time ago, but basically that